

REMARKS

Reconsideration and allowance of this application are respectfully requested in light of the above amendments and the following remarks.

Claims 1, 8 and 12 have been amended to recite subject matter of original claim 5, and claim 5 has been amended to be consistent with the changes made to base claim 1. Claims 6 and 10 have been amended for clarity. Support for these amendments is provided for example in original claim 5 and paragraphs [0004] and [0033] of the published specification. The amendments were not presented earlier due to the unforeseeability of the remarks presented in the Final Rejection. (It should be noted that references herein to the specification and drawings are for illustrative purposes only and are not intended to limit the scope of the invention to the referenced embodiments.)

Claims 1, 3, 5, 8, 10, and 12 were rejected, under 35 USC §102(b), as being anticipated by Hiramatsu et al. (US 2002/0136271). Claims 2, 6, and 9 were rejected, under 35 USC §103(a), as being unpatentable over Hiramatsu in view of Nobukiyo et al. (US 2003/0073409). Claim 4 was rejected, under 35 USC §103(a), as being unpatentable over Hiramatsu in view of Srivastava et al. (US 6,735,178). Claim 7 was rejected, under 35 USC §103(a), as being unpatentable over Hiramatsu in view of Ryu (US 2002/0126645). Claim 11 was rejected, under 35 USC §103(a), as being unpatentable over Hiramatsu in view of Hans et al. (US 2005/0037766). To the extent these rejections may be deemed applicable to the amended claims presented herein, the Applicant respectfully traverses as follows.

Claim 1 now defines a base station apparatus that selects a mobile station in accordance with both the channel quality of a control channel for transmitting control information and the

channel quality of a data channel assigned to the mobile station. The control information includes assignment information of the data channel or modulation and coding scheme (MCS) information. The claimed subject matter supports an advantage of using channel qualities of two channels in selecting a mobile station, so as to avoid unnecessarily raising the transmission power of a channel and, thereby, inducing adjacent cell interference and reduced communication efficiency (see paragraphs [0007]-[0010] of the published specification).

Hiramatsu does not disclose the Applicant's claimed subject matter of selecting a mobile station in accordance with the channel quality of a control channel for transmitting control information, which includes assignment information of a data channel or MCS information.

The Final Rejection proposes that Hiramatsu's Common Pilot control CHannel (CPICH) corresponds to the claimed control channel (see Final Rejection section 3, lines 10-13, and page 4, lines 7- 11).

However, Hiramatsu discloses that a base station apparatus 11 sends a common known signal using common control channel CPICH (see Hiramatsu paragraph [0003], lines 4-7).

Hiramatsu's CPICH is a channel for transmitting common known signals (i.e., pilot signals), whereas the Applicant's claimed control channel is a channel for transmitting control information, which includes assignment information of a data channel or MCS information.

Hiramatsu does not disclose that the CPICH transmits assignment information of a data channel or MCS information.

Although Hiramatsu discloses communicating a dedicated physical channel (DPCH) from a mobile station to a base station that includes MCS information (see Hiramatsu paragraph [0050], lines 11-13), Hiramatsu does not disclose selecting a mobile station based on the channel

quality of this DPCH. Instead, Hiramatsu discloses selecting a mobile station based on the MCS information conveyed within the DPCH channel (see paragraph [0051], lines 1-7). Stated more simply, Hiramatsu's system does not consider the channel quality of the DPCH channel communicating the MCS information when selecting a mobile station.

Thus, Hiramatsu does not identically disclose the Applicant's claimed subject matter of selecting a mobile station in accordance with the channel quality of a control channel for transmitting control information, which includes assignment information of a data channel or MCS information.

Accordingly, the Applicant submits that Hiramatsu does not anticipate the subject matter defined by claim 1. Independent claims 8 and 12 similarly recite the above-mentioned subject matter distinguishing apparatus claim 1 from Hiramatsu, but claim 12 does so with respect to a method. Therefore, allowance of claims 1, 8, and 12 and all claims dependent therefrom is considered to be warranted.

In view of the above, it is submitted that this application is in condition for allowance and a notice to that effect is respectfully solicited.

Respectfully submitted,

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